Court File No.: COA-26-CV-0836 and COA-26-CV-0897

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

THE REGIONAL MUNICIPALITY OF WATERLOO

Applicant (Appellant)

- and -

THE ATTORNEY GENERAL OF ONTARIO

Appellant (Intervener)

- and -

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Respondents
(Respondents/Cross-Applicants)

- and -

CITY OF HAMILTON

Proposed Intervener

FACTUM OF THE PROPOSED INTERVENER, CITY OF HAMILTON
(Motion for leave to intervene)

Date: October 21, 2026

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PART I—OVERVIEW

1. The City of Hamilton seeks leave to intervene as a friend of the court in these consolidated appeals.

2. Homelessness is a complex, nationwide social issue of diverse origin without simple solutions. Many municipalities in Canada, including Hamilton, bear the immediate impacts of these challenges on the ground. In responding to encampments, municipalities face the challenge of balancing the needs of individuals experiencing homelessness and the broader public interest.

3. The application judge declared the Regional Municipality of Waterloo's site-specific encampment by-laws of no force and effect under s.52(1) of the *Charter*, and added a "declaration plus": he retained jurisdiction and ordered that the relevant municipality may return to court only once it has implemented either "Safe Tenting Protocol" or provided alternative encampment site, or both.

4. This appeal raises issues of significant public importance related to the use of public property, municipal encampment responses, ss.7 and 15 *Charter* rights, and the appropriate role of the judiciary in *Charter* challenges to municipal by-laws and in directing municipal policy approaches to homelessness.

5. This Court has not yet given general guidance on cases involving *Charter* challenges to by-laws and municipal actions that affect unhoused people who shelter on municipal property. The outcome of this appeal may have jurisprudential value for all municipalities in Ontario, including Hamilton.

6. Hamilton has a real, substantial and identifiable interest in the appeal. As a single-tier municipality facing distinct strategic and frontline operational challenges, Hamilton offers a useful perspective distinct from those of the parties.

7. If granted leave to intervene, Hamilton will make focussed submissions on one issue raised on these appeals: whether the court exceeded its jurisdiction and proper constitutional role in failing "to extend the necessary deference to elected governments" and "instead prescribed its own views" on how complex social issues related to homelessness should be addressed.[1] Specifically, Hamilton intends to argue that a "declaration plus", including retained jurisdiction and prescribed policy options, exceeds the court's constitutional role and is not an appropriate remedy as against a municipality when a by-law is struck down under s.52(1) of the *Charter* and/or where the principles of remedial jurisdiction are not satisfied.

8. Granting Hamilton leave will not prejudice any party. Hamilton meets the test for leave to intervene and should be granted leave on a without costs basis.

PART II—FACTS

A. Homelessness in Hamilton

9. Hamilton is a single-tier municipality with a population of approximately 650,000. The City owns and manages hundreds of parks and open spaces, hundreds of kilometres of road allowances, and other public property.[2]

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[1] Attorney General of Ontario, Notice of Appeal (June 22, 2026) ["**Ontario Notice of Appeal**"], at ground 17(p), Appeal Book and Compendium of the Appellant/Intervener ["**ABCO**"] at Tab 1, p 8; The Regional Municipality of Waterloo, Notice of Appeal (June 22, 2026) ["**Region Notice of Appeal**"], at ground 8(c), ABCO at Tab 2, p 22.

[2] Affidavit of Michelle Baird, affirmed October 21, 2026, The City of Hamilton's Motion Record ["**MR**"] Tab 2 ["**Baird Affidavit**"] at para 3.

10. The number of individuals experiencing homelessness in Hamilton is variable and has generally increased since the COVID-19 pandemic. At present, over two thousand individuals are counted as actively homeless in Hamilton, although this does not necessarily mean all of these individuals are experiencing *unsheltered* homelessness, nor are they all experiencing homelessness on a particular date.[3]

11. In 2026, Hamilton budgeted approximately $209 million for affordable housing, housing stability and homelessness programs. Approximately one-third of this funding originates from other levels of government, with the remaining funded by Hamilton taxpayers. Hamilton coordinates with and funds service providers in the community, including in providing a Hamilton-funded emergency shelter system.[4]

B. Hamilton's response to encampments

12. Hamilton's response to encampments has been guided by several different policy approaches over the past 10 years, seeking to balance the needs of individuals experiencing homelessness with the needs of the broader public. Protocols for enforcement and general strategies have changed over time, as Hamilton has grappled with the complexities of the social issues involved while seeking to strike this balance.[5]

PART III—ISSUES

13. The issue on this motion is whether Hamilton should be granted leave to intervene as a friend of the court under Rules 13.02 and 13.03. Hamilton submits that it meets the test and should be granted leave to intervene on the issues set out in its draft proposed factum.

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[3] Baird Affidavit at para 5.
[4] Baird Affidavit at paras 4 and 6.
[5] Baird Affidavit at paras 7 to 12.

PART IV—LAW AND ARGUMENT

14. A friend of the court intervenes "for the purpose of rendering assistance to the court by way of argument". It is well-established that, when deciding whether to grant leave to intervene, the Court will consider:

(a) the nature of the case;

(b) the issues involved;

(c) the likelihood that the proposed intervener will make a useful contribution not otherwise offered by the parties; and

(d) whether the intervention will cause injustice or undue delay.[6]

15. However, courts are less stringent in applying the factors for granting intervener status as friend of the court in cases involving constitutional or other public interest or policy issues. In *Charter* cases, a proposed intervener usually has to establish one of three criteria:

(a) It has a real, substantial and identifiable interest in the subject matter of the proceedings;

(b) It has an important perspective distinct from the parties; or

(c) It is a well-recognized group with a special expertise and a broadly identifiable membership base.[7]

16. In any event, Hamilton satisfies all criteria under the more and less stringent tests.

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[6] Rules 13.02 and 13.03 of the *Rules of Civil Procedure,* RRO 1990, Reg 194*; Peel (Regional Municipality) v. Great Atlantic & Pacific Co. of Canada Ltd.* (1990), 74 O.R. (2d) 164 at 166 (C.A.); *Bedford v. Canada (Attorney General)*, 2009 ONCA 669 at para 2.

[7] *P.S. v. Ontario*, 2014 ONCA 160, at para. 6.

A. Nature of the case and issues involved – Hamilton has a real, substantial and identifiable interest

17. The application and cross-application below concerned the constitutionality of site-specific Regional Municipality of Waterloo ("**Region**") by-laws to implement a phased closing of a homeless encampment on a specific Region-owned property.

18. The application judge found that the by-laws infringed ss.7 and 15 of the *Charter* and were not saved by section 1. Having declared the by-laws of no force and effect under section 52(1), the application judge added a "declaration plus": he retained jurisdiction so that the municipality may return to court only "once it has promulgated either a Safe Tenting Protocol or provided an alternative site for an encampment somewhere reasonably proximate to 100 Victoria, or both" (the "**Declaration Plus**").

19. Among other grounds of appeal, the Appellants, the Attorney General of Ontario ("**Ontario**") and the Region, argue that the court exceeded its jurisdiction and proper constitutional role in that it "failed to extend the necessary deference to elected governments" and "instead prescribed its own views" on how complex social issues related to homelessness should be addressed.[8]

20. This is a case involving constitutional and other public interest or policy issues. The application judge acknowledged that the case raises issues of significant public importance related to the use of public property, municipal encampment responses, and ss.7 and 15 rights under the *Charter*.[9] This appeal also raises important issues with respect to the appropriate role of the judiciary in *Charter* challenges of municipal

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[8] Ontario Notice of Appeal at ground 17(p), ABCO at Tab 1, p 8, Region Notice of Appeal at ground 8(c), ABCO at Tab 2, p 10.

[9] *The Regional Municipality of Waterloo v. Named Respondents and Persons Unknown*, 2026 ONSC 2971 [the "**Decision**"] at paras 4, 34, and 109.

by-laws and in directing municipal policy approaches to the complex multi-sectoral issue of homelessness.[10]

21. The Court of Appeal has not yet weighed in with general guidance on cases involving *Charter* challenges to by-laws and municipal actions that affect unhoused people who shelter on municipal parks and property.[11] The outcome of this appeal may have jurisprudential value for all municipalities in Ontario, including Hamilton.

22. Hamilton has a real, substantial and identifiable interest in this subject matter and the nature of the case and issues support its involvement as a friend of the court.

B. Hamilton has a useful perspective distinct from the immediate parties

23. Hamilton has an important perspective distinct from the immediate parties. Hamilton also has experience with encampments, and it faces distinct strategic and frontline operational challenges which differ from other municipalities, including that of an upper-tier municipality like the Region of Waterloo. Hamilton also brings its perspective as a respondent in proceedings related to encampments and Hamilton's enforcement of by-laws of general application.[12]

24. If granted leave to intervene, Hamilton will advance submissions that are different from those advanced by the appellants and respondents, which will provide a useful and distinct perspective on the appeals. Hamilton will argue that a declaration plus, including retained jurisdiction and prescribed policy options, exceeds the court's

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[10] Ontario Notice of Appeal, ground 17(p), ABCO at Tab 1, p 8; Attorney General of Ontario, Factum of the Appellant/Intervener (August 7, 2026) ["**Ontario Factum**"], para. 116; Waterloo Notice of Appeal, ground 8(c), ABCO at Tab 2, p 10.

[11] *Heegsma v. Hamilton (City),* 2026 ONCA 726 at paras 85 and 86.

[12] See *Heegsma v. Hamilton (City)*, 2026 ONCA 726, where this court remitted the application decision to the Superior Court of Justice for rehearing, including with respect to ss. 7 and 15 claims.

constitutional role and is not an appropriate remedy as against a municipality when a by-law is struck down under s.52(1) of the *Charter* and where the principles of remedial jurisdiction are not satisfied.

14. Hamilton's proposed submissions are in its draft proposed factum at Tab 4 of its Motion Record.

C. No undue delay or injustice will flow from granting Hamilton leave to intervene

21. No undue delay or injustice will flow from granting Hamilton leave to intervene in this appeal.

22. Hamilton will take the record as it finds it and will not seek to supplement the record.

23. Hamilton's proposed factum does not raise new issues. The appellants have squarely raised the issue that the application judge exceeded his constitutional role in in their Notices of Appeal,[13] but neither appellant addresses this issue in detail in their factums.

24. Hamilton only seeks to provide assistance to the Court by advancing arguments in support of a public interest that might not otherwise be adequately represented by the parties to the appeal.

25. Hamilton will also coordinate with any other interveners to avoid duplication and comply with any timetable set by the Court. Hamilton will not take a position on the facts specific to 100 Victoria Street.

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[13] Ontario Notice of Appeal, ground 17(p), ABCO at Tab 1, p 8; Ontario Factum, para. 116; Waterloo Notice of Appeal, ground 8(c) ABCO at Tab 2, p 10.

PART V — ORDER SOUGHT

22. Hamilton requests an order granting it leave to intervene as a friend of the court. The order would include:

a. leave to file a factum of no more than 10 pages, or such other length the court may deem appropriate;

b. leave to make oral submissions of no more than 15 minutes, or such other length the court may deem appropriate; and

c. that there be no award of costs for or against Hamilton.

23. A draft Order is at Tab 3 of Hamilton's Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 21st DAY OF OCTOBER, 2026,

I confirm that I am satisfied as to the authenticity of all authorities cited herein.

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SCHEDULE "A": LIST OF AUTHORITIES

Name		Page/Para(s) cited	Factum paras
1.	*Peel (Regional Municipality) v. Great Atlantic & Pacific Co. of Canada Ltd. (1990), 74 O.R. (2d) 164* (C.A.)	p 166	14
2.	*Bedford v. Canada (Attorney General), 2009 ONCA 669*	para 2	14
3.	*P.S. v. Ontario, 2014 ONCA 160*	para 6	15
4.	*The Regional Municipality of Waterloo v. Named Respondents and Persons Unknown*, 2026 ONSC 2971	paras 4, 34, and 109	19
5.	*Heegsma v. Hamilton (City)*, 2026 ONCA 726	paras 85-86	20, 22

SCHEDULE "B": TEXT OF STATUTES, REGULATIONS & BY - LAWS

Rules of Civil Procedure, R.R.O. 1990, Reg. 194

Leave to Intervene as Friend of the Court

13.02 Any person may, with leave of a judge or at the invitation of the presiding judge or associate judge, and without becoming a party to the proceeding, intervene as a friend of the court for the purpose of rendering assistance to the court by way of argument.

Leave to Intervene in Divisional Court or Court of Appeal

13.03 (2) Leave to intervene as an added party or as a friend of the court in the Court of Appeal may be granted by a panel of the court, the Chief Justice or Associate Chief Justice of Ontario or a judge designated by either of them.

Court File No.: COA-26-CV-0836 and COA-26-CV-0897

THE REGIONAL MUNICIPALITY OF WATERLOO
Appellant (Applicant)

- and -

JOSEPHINA DUGAS et al.
Respondents (Respondents/Cross-Applicants)

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT
TORONTO

**FACTUM OF THE MOVING PARTY,
CITY OF HAMILTON**
(Motion for leave to intervene)

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